

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GARLAND A. JONES,

Plaintiff,

v.

RICHARDS, et al.,

Defendants.

Case No. 1:20-cv-00639-SKO (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DENY PLAINTIFF'S MOTION TO  
PROCEED *IN FORMA PAUPERIS* AND  
DISMISS ACTION**

(Doc. 7)

**14-DAY DEADLINE**

Clerk of the Court to Assign a District Judge

Plaintiff Garland A. Jones, a state prisoner proceeding *pro se*, initiated this civil rights action on April 3, 2020. (Doc. 1.) Before the Court is Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 7.) Because Plaintiff has three "strikes" under section 1915(g) and fails to show that he is in imminent danger of serious physical injury, the Court recommends that his application be denied and this action dismissed without prejudice.

**I. THREE-STRIKES PROVISION OF 28 U.S.C. § 1915**

28 U.S.C. § 1915 governs *in forma pauperis* proceedings. The statute provides, "[i]n no event shall a prisoner bring a civil action ... under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger

1 of serious physical injury.” 28 U.S.C. § 1915(g).

2 **II. DISCUSSION**

3 The Court takes judicial notice of three of Plaintiff’s prior actions that were dismissed  
4 because they failed to state a claim on which relief can be granted<sup>1</sup>: (1) *Jones v. Tolson, et al.*, No.  
5 1:15-cv-01037-JDP (E.D. Cal.) (dismissed on September 14, 2015, for failure to state a claim);  
6 (2) *Jones v. Mailroom Officials, et al.*, No. 1:17-cv-00281-LJO-SKO (E.D. Cal) (dismissed on  
7 January 9, 2019, for failure to state a claim); (3) *Jones v. California Correctional Healthcare  
8 Services, et al.*, No. 2:17-cv-00738-WBS-DB (E.D. Cal) (dismissed on April 26, 2019, for failure  
9 to state a claim). All of these cases were dismissed before Plaintiff initiated the current action on  
10 April 3, 2020. Plaintiff is therefore precluded from proceeding *in forma pauperis* unless, at the  
11 time he filed his complaint, he was under imminent danger of serious physical injury. *See*  
12 *Andrews v. Cervantes*, 493 F.3d 1047, 1052-53 (9th Cir. 2007).

13 Plaintiff alleges the defendants failed to prevent his transfer to R.J. Donavan Correctional  
14 Facility despite “inmates with predatory behavior chronos” and “harassment by inmates and  
15 staff,” including staff’s issuance of “fraudulent RVRs.” (Doc. 1 at 3.) Plaintiff requests that the  
16 Court order prison staff to stop issuing false RVRs and halt all “mail violations.” (*See id.*) These  
17 allegations fail to show that Plaintiff is in imminent danger of serious physical injury.

18 **III. CONCLUSION AND RECOMMENDATIONS**

19 Based on the foregoing, the Court RECOMMENDS that:

20 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 7) be DENIED; and,  
21 2. This action be DISMISSED without prejudice to refiling upon prepayment of the  
22 filing fee.

23 The Clerk of the Court is DIRECTED to assign a district judge to this action.

24 These Findings and Recommendations will be submitted to the United States District  
25 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**  
26 of the date of service of these Findings and Recommendations, Plaintiff may file written  
27 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s

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28 <sup>1</sup> The Court may take judicial notice of court records. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time  
2 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
3 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

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Dated: May 28, 2020

/s/ *Sheila K. Oberlo*

7 UNITED STATES MAGISTRATE JUDGE

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